

## **REMARKS/ARGUMENTS**

Claims 1-5 and 10-12 were rejected and remain pending in the instant application. Claim 6-9 and 13-29 were cancelled without prejudice in response to the Requirement for Restriction/Election mailed July 16, 2009. Claims 1, 2, 4, and 10-12 are amended herein. All amendments to the claims are fully supported by the original disclosure, and no new matter is added. Reconsideration of the rejections is respectfully requested.

### **Double Patent Claiming**

In the Office Action, claim 12 was found to be a substantial duplicate of claim 11. Applicants have amended claim 11 to recite subject matter distinguishable from that of claim 12. These amendments obviate any future objection to claim 12 as being a substantial duplicate of claim 11.

### **Claims Rejection Under 35 USC § 103**

Claims 1-5 and 10-12 were rejected under 35 USC § 103(a) as being unpatentable over US Patent No. 6,820,259 to Kawamata et al. (hereinafter *Kawamata*) in view of US Pub. No. 2003/0022657 to Herschberg et al. (hereinafter *Herschberg*).

While Applicants respectfully disagree that the cited combination teaches or suggests the features of the claims, Applicants have nonetheless amended independent claims 1 and 10 (without prejudice) in order to advance prosecution. Claim 1 has been amended to recite, in part, “a memory comprising computer executable instructions which, upon execution are operative to cause the wireless computing apparatus to:

request available updates;

receive, in response to said request, an update catalog for available updates, said update catalog comprising available discretionary updates;

receive, with the update catalog, any mandatory updates;

automatically install the received mandatory updates;

determine relevance of the available discretionary updates; and

depict representations of any relevant discretionary updates in a selectable manner.”

These amendments are supported at least on page 9, lines 11-32; page 10, lines 1-26; and Figures 1, 2, 5 and 6.

Thus, claim 1 as amended recites a device with executable instructions that allow for the automatic installation of mandatory updates, while also allowing the user to select from among discretionary updates determined by the device to be relevant.

Kawamata and Herschberg do not teach or suggest these features. In particular, neither reference teaches or suggests “receive, with the update catalog” [which comprises discretionary updates] “any mandatory updates.” The references also do not teach or suggest “determine relevance of the available discretionary updates.”

Kawamata discloses a navigation terminal that receives software updates from a software management center. When the user of the navigation terminal requests a software update, the terminal sends the names and versions of the terminal’s hardware and software versions to the software management center. The software management center selects a “software group” (i.e. the reference software and software necessary for installation/use of the reference software) that is necessary for updating the terminal and transmits the software group to the terminal, where the downloaded software is stored in a temporary storage unit 185 of the device. The user must then select software update start button 1810 to start the update or a cancel button 1820 to cancel the update. See col. 12, line 27 – col. 14, line 6.

Thus, in response to a request for updates from the terminal, the software management center of Kawamata determines which of the potential updates are relevant to the terminal and sends only those updates to the terminal. User interaction is required to install the downloaded updates. Kawamata does not teach or suggest mandatory updates and discretionary updates, nor does Kawamata disclose or suggest automatic installation of updates received in response to an update request. Finally, Kawamata teaches that it is the server, not the device, which determines relevance of updates and sends only those updates to the device.

For at least these reasons, Kawamata does not teach or suggest the above features of claim 1.

Herschberg cannot remedy the deficiencies of Kawamata. Herschberg discloses a system and method for providing applications to wireless devices, in which the wireless device transmits to a server framework a list of applications that have already been downloaded by the device. The server framework determines which applications are required for the wireless device and sends them to the device for installation. The server framework then identifies which optional applications are compatible with, and not already resident on, the wireless device. A list of these pre-selected applications is sent to the device separately, and the user of the device may select from among them to request the optional applications. See [0175]-[0181].

Thus, like Kawamata, Herschberg does not teach or suggest “receive, with the update catalog” [which comprises discretionary updates] “any mandatory updates” or “determine relevance of the available discretionary updates.” Instead, Kawamata **teaches away** from these recitations by disclosing that the relevance of optional applications is determined by the server framework, not by the device. The server framework then sends the list to the device separately from the required updates.

For at least the above reasons, the cited combination of Kawamata and Herschberg fails to teach or suggest the recitations of amended claim 1. Therefore, claim 1 is allowable over the cited references under § 103(a).

Claims 2-5 depend from claim 1, incorporating its recitations, and are thus allowable over the cited references for at least the same reasons. Claims 2-5 are further allowable over the cited references for their additional recitations.

Claim 10 has been amended to recite subject matter substantially similar to that of amended claim 1, and is therefore allowable over the cited combination for at least the same reasons.

Claims 11-12 depend from claim 10, incorporating its recitations, and are thus allowable for the same reasons. Claims 11-12 are further allowable over the cited references for their additional recitations.

## **CONCLUSION**

In view of the foregoing amendments and remarks, Applicants believe the applicable rejections have been overcome and all claims remaining in the application are presently in condition for allowance. Accordingly, favorable consideration and a Notice of Allowance are earnestly solicited. The Examiner is invited to telephone the undersigned representative at (206) 622-1711 if the Examiner believes that an interview might be useful for any reason.

It is not believed that extensions of time are required beyond those that may otherwise be provided for in documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a).

If the Examiner has any questions concerning the present paper, the Examiner is kindly requested to contact the undersigned at (206) 407-1542. If any fees are due in connection with filing this paper, the Commissioner is authorized to charge the Deposit Account of Schwabe, Williamson and Wyatt, P.C., No. 50-0393.

Respectfully submitted,  
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